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MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—CONCLUSIVENESS OF DECISION OF THE BOARD—A primary object of all workmen's compensation legislation is the speedy and final settlement of claims for injuries due to industrial accidents. To secure this end it is absolutely necessary that where the administration of such a law is placed in the hands of a commission or board, its awards and decisions should be as far as possible the last expressions required. Under all the acts the decisions of the board may be appealed from because of errors of law. How far is the finding of the board final as to a question of fact?

The recent case of *Uphoff v. Industrial Board of Illinois*,<sup>1</sup> presents the question of the board's finding of a jurisdictional fact. There the board found that the employer was as a matter of fact one of a certain class included within the operation of the statute. On appeal the court held that the decision of the board was only binding when it was acting within its powers, and that it had no power to apply the act to persons or corporations who are not subject to its provisions and that if it did so the remedy was in the courts.

The board is generally considered as an administrative body, endowed with certain quasi-judicial powers.<sup>2</sup> The members are not judicial officers but perform a great many of the duties usually performed by such officers, such as administering oaths, holding hearings, taking testimony, examining evidence, making rulings of law and findings of fact, and rendering decisions. The Massachusetts courts consider that they are bound by the same general rules of law in the performance of these duties that govern judicial officers in the discharge of the same duties. To that extent the findings of fact of the board are considered as of the same weight and effect as those of a judge without a jury, and are not to be set aside if there was any evidence upon which they could have been made.<sup>3</sup> When all the evidence is reported it may become a question of law whether the evidence was sufficient to warrant the findings;<sup>4</sup> but where no evidence is reported it cannot be said as a matter of law that the finding was not warranted.<sup>5</sup> And questions as to the correctness of the board's rulings as to the admission or exclusion

<sup>1</sup> 111 N. E. 128 (Ill. 1916).

<sup>2</sup> *Pigeon's Case*, 216 Mass. 51 (1913); *Appeal of Bond Co.*, 93 Atl. 245 (Conn. 1915); *Reck v. Whittlesberger*, 148 N. W. 247 (Mich. 1914); *Borgnis v. Falk Co.*, 147 Wis. 327 (1911); *Poccardi v. Pub. Serv. Comm.*, 84 S. E. 242 (W. Va. 1915).

<sup>3</sup> *Pigeon's Case*, 216 Mass. 51 (1913); *Diaz's Case*, 217 Mass. 36 (1914); *Burn's Case*, 218 Mass. 8 (1914); *In re McPhee*, 109 N. E. 633 (Mass. 1915); *In re Doherty*, 109 N. E. 887 (Mass. 1915); *In re Savage*, 110 N. E. 283 (Mass. 1915).

<sup>4</sup> *Herrick's Case*, 217 Mass. 111 (1914); *Buckley's Case*, 218 Mass. 354 (1914); *Fisher's Case*, 220 Mass. 581 (1915).

<sup>5</sup> *Septimo's Case*, 219 Mass. 430 (1914); *Bentley's Case*, 217 Mass. 79 (1914).

of evidence will be considered on appeal, but there will be no reversal of the decree for error in this respect unless the substantial rights of the parties appear to have been affected.<sup>6</sup>

Other jurisdictions have reached practically the same result,<sup>7</sup> although the courts sometimes give different reasons for their decisions. Thus Wisconsin courts consider it to be jurisdictional error, which is always subject to review by the courts, if there has been a clear violation of the law in reaching the result attained by the board, such as acting without evidence when evidence is required, or making a decision contrary to all the evidence.<sup>8</sup> In Connecticut the Compensation Commissioner is regarded as an executive officer purely. There can be no trial *de novo* on the facts, but there may be an appeal from his award on the ground that it is an original application to the court to exercise its judicial power in respect to acts done by an administrative tribunal in excess or abuse of its powers.<sup>9</sup>

The finality of the board's findings of fact extends, of course, to ultimate facts, that is, to conclusions of fact determined by the board from the evidentiary facts proved.<sup>10</sup> To hold otherwise would be to defeat the very purpose of the act and would result in a volume of unnecessary litigation and useless appeals. Such facts, however, must be based on competent evidence. While workmen's compensation boards are not usually bound by technical rules of evidence their awards cannot be based on mere guess, supposition or conjecture.<sup>11</sup> As stated before, the court may pass on the sufficiency, or legality, of the evidence. But it is not within the province

<sup>6</sup> Pigeon's Case, 216 Mass. 51 (1913).

<sup>7</sup> The findings of fact are final when supported by evidence: *Smith v. Ind. Comm.*, 147 Pac. 600 (Cal. 1915); *Hills v. Blair*, 148 N. W. 243 (Mich. 1914); *Redfield v. Ins. Co.*, 150 N. W. 362 (Mich. 1915); *Powley v. Vivian*, 154 N. Y. Supp. 426 (1915); *Plass v. Railroad*, 155 N. Y. Supp. 854 (1915); *Fuel Co. v. Ind. Comm.*, 150 N. W. 998 (Wis. 1915).

Sufficiency of evidence may be considered by the court: *Power Co. v. Pillsbury*, 149 Pac. 35 (Cal. 1915); *Reck v. Whittlesberger*, 148 N. W. 247 (Mich. 1914); *Poccardi v. Pub. Ser. Comm.*, 84 S. E. 242 (W. Va. 1915); *Hoenig v. Ind. Comm.*, 150 N. W. 996 (Wis. 1915).

<sup>8</sup> *Borgnis v. Falk Co.*, 147 Wis. 327 (1911); *Harvester Co. v. Ind. Comm.*, 157 Wis. 167 (1914).

<sup>9</sup> *Appeal of Bond Co.*, 93 Atl. 245 (1915); *Kennerson v. Thames Towboat Co.*, 94 Atl. 372 (1915).

<sup>10</sup> *Western Indemnity Co. v. Pillsbury*, 151 Pac. 398 (Cal. 1915); *Powley v. Vivian*, 154 N. Y. Supp. 426 (1915); *Northwestern Iron Co. v. Ind. Comm.*, 154 Wis. 97 (1913).

<sup>11</sup> *Reck v. Whittlesberger*, 148 N. W. 247 (Mich. 1914); *Voelz v. Ind. Comm.*, 152 N. W. 830 (Wis. 1915). The admission of legally incompetent evidence in a proceeding before the board is no ground for reversal of its award if there is any evidence upon which its finding could have been made. *Pigeon's Case*, 216 Mass. 51 (1913); *Fitzgerald v. Lozier Motor Co.*, 154 N. W. 67 (Mich. 1915); *First National Bank v. Ind. Comm.*, 154 N. W. 847 (Wis. 1915).

of the court to weigh the evidence which has been introduced.<sup>12</sup> In New York the evidence taken before the commissioners may be certified to the Appellate Division together with their findings of fact, and is before the court to supplement and explain, but not to contradict the commission's finding.<sup>13</sup>

It is obviously improper that an administrative body should be able to assume jurisdiction over persons or situations not contemplated to be within its purviews by the act which called the board into being. Hence, the question of jurisdiction is always open to the courts for review. The board cannot itself conclusively settle that question and thus endow itself with power;<sup>14</sup> which is the law of the principal case.

The Pennsylvania Workmen's Compensation Act of 1915 provides that the board's findings of fact shall in all cases be final, and from any decision of the board on a question of law an appeal may be taken to the courts.<sup>15</sup> It would seem illogical to suppose that this section were meant to include jurisdictional facts, and it remains to be seen how far the courts will scan the evidence to determine the legality of the board's findings.

T. L. H.

<sup>12</sup> *Appeal of Bond Co.*, *supra*, note 9; *Grove v. Paper Co.*, 151 N. W. 554 (Mich. 1915); *Spooner v. Detroit Co.*, 153 N. W. 657 (Mich. 1915); *Milwaukee Coke & Gas Co. v. Ind. Comm.*, 151 N. W. 245 (Wis. 1915).

<sup>13</sup> *In re Rheinwald*, 153 N. Y. Supp. 598 (1915); *Gleisner v. Gross*, 155 N. Y. Supp. 946 (1915).

<sup>14</sup> *Power Co. v. Pillsbury*, 149 Pac. 35 (Cal. 1915); *In re Rheinwald*, 153 N. Y. Supp. 598 (1915); *Borgnis v. Falk*, 147 Wis. 327 (1911).

<sup>15</sup> Act of June 2, 1915, P. L. 736, section 409.